

Kurt A. Kappes (SBN 146384)
Todd Pickles (SBN 215629)
Madeline Orlando (SBN 337460)
GREENBERG TRAURIG, LLP
400 Capitol Mall, Suite 2400
Sacramento, California 95814
Telephone: 916.442.1111
Facsimile: 916.448.1709
kappesk@gtlaw.com
picklest@gtlaw.com
orlandom@gtlaw.com

Attorneys for Defendant
TRI-MERIT, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CTI III, LLC,

Plaintiff,

v.

BARRY DEVINE, an individual; TRI-MERIT,
LLC, an Illinois limited liability company; and
DOES 1 through 50,

Defendants.

No. 2:21-cv-2184 JAM DB

**STIPULATED PROTECTIVE ORDER FOR
LITIGATION INVOLVING PATENTS,
HIGHLY SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE SECRETS**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. This confidential, proprietary, or private information may include financial records, contracts, marketing materials, client information, price information, strategic planning and forecasting, and confidential employee information and other information. This information should be protected by a court order as this instant action concerns the alleged misuse of the abovementioned information and without this Order in place both plaintiff and defendants are subject to injury.

Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Nonetheless, the parties do agree that any and all discovery produced by any party, including disclosures, responses, or documents, information, or evidence produced, shall be used solely for purposes of this litigation, including the potential settlement thereof, and for no other purpose.

The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; the parties agree to follow the applicable procedures set forth both the Local Rules and controlling law when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or items that it produces
2 in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

4 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or
5 manner in which it is generated, stored, or maintained (including, among other things, testimony,
6 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in
7 this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
9 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant
10 in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time
11 of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

12 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
13 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
14 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

15 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
16 sensitive “Confidential Information or Items” representing computer code and associated comments and
17 revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in
18 detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or
19 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive
20 means.

21 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does
22 not include Outside Counsel of Record or any other outside counsel.

23 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity
24 not named as a Party to this action.

25 ///

26 ///

27 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but
28 are retained to represent or advise a party to this action and have appeared in this action on behalf of that

party or are affiliated with a law firm which has appeared on behalf of that party.

2.13 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.15 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.16 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise

directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

///

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
2 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a portion or
3 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify
4 the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
5 portion, the level of protection being asserted.

6 A Party or Non-Party that makes original documents or materials available for inspection need not
7 designate them for protection until after the inspecting Party has indicated which material it would like
8 copied and produced. During the inspection and before the designation, all of the material made available
9 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
10 inspecting Party has identified the documents it wants copied and produced, the Producing Party must
11 determine which documents, or portions thereof, qualify for protection under this Order. Then, before
12 producing the specified documents, the Producing Party must affix the appropriate legend
13 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
14 CONFIDENTIAL – SOURCE CODE) to each page that contains Protected Material. If only a portion or
15 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify
16 the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
17 portion, the level of protection being asserted.

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
19 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding,
20 all protected testimony and specify the level of protection being asserted. When it is impractical to identify
21 separately each portion of testimony that is entitled to protection and it appears that substantial portions of
22 the testimony may qualify for protection, the Designating Party may invoke on the record (before the
23 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific
24 portions of the testimony as to which protection is sought and to specify the level of protection being
25 asserted. Only those portions of the testimony that are appropriately designated for protection within the
26 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
27 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
28 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY.”

2 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other
3 proceeding to include Protected Material so that the other parties can ensure that only authorized
4 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present
5 at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its
6 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

7 Transcripts containing Protected Material shall have an obvious legend on the title page that the
8 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including
9 line numbers as appropriate) that have been designated as Protected Material and the level of protection
10 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
11 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall
12 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
13 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript
14 shall be treated only as actually designated.

15 (c) for information produced in some form other than documentary and for any other
16 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
17 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.
19 If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent
20 practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
22 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
23 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
24 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
25 Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
28 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation

1 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
2 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
3 designation by electing not to mount a challenge promptly after the original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
5 providing written notice of each designation it is challenging and describing the basis for each challenge.
6 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
7 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
8 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
9 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14
10 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
11 belief that the confidentiality designation was not proper and must give the Designating Party an
12 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
13 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed
14 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
15 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
16 manner.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
18 the Designating Party shall file and serve a motion to retain confidentiality within 21 days of the initial
19 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not
20 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent
21 declaration affirming that the movant has complied with the meet and confer requirements imposed in the
22 preceding paragraph. Failure by the Designating Party to make such a motion including the required
23 declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
24 designation for each challenged designation. In addition, the Challenging Party may file a motion
25 challenging a confidentiality designation at any time if there is good cause for doing so, including a
26 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant
27 to this provision must be accompanied by a competent declaration affirming that the movant has complied
28 with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Challenging Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 14 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other

1 person who otherwise possessed or knew the information.

2 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items
4 to Designated House Counsel or Experts.

5 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
6 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been
7 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b)
8 first must make a written request to the Designating Party that (1) sets forth the full name of the Designated
9 House Counsel and the city and state of his or her residence, and (2) describes the Designated House
10 Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient
11 detail to determine if House Counsel is involved, or may become involved, in any competitive decision-
12 making.

13 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
14 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
15 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
16 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to
17 the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the
19 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and
20 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4)
21 identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has
22 received compensation or funding for work in his or her areas of expertise or to whom the expert has
23 provided professional services, including in connection with a litigation, at any time during the preceding
24 five years¹, and (6) identifies (by name and number of the case, filing date, and location of court) any
25 litigation in connection with which the Expert has offered expert testimony, including through a
26 declaration, report, or testimony at a deposition or trial, during the preceding five years.

27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide
28 whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to
disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion in accordance with applicable law seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

8. SOURCE CODE

(a) To the extent production of source code becomes necessary in this case, a Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE" if it comprises or includes confidential, proprietary or trade secret source code.

(b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information and may be disclosed only to the individuals to whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.

1 (c) Any source code produced in discovery shall be made available for inspection, in a
2 format allowing it to be reasonably reviewed and searched, during normal business hours or at other
3 mutually agreeable times, at an office of the Producing Party's counsel or another mutually agreed upon
4 location. The source code shall be made available for inspection on a secured computer in a secured room
5 without Internet access or network access to other computers, and the Receiving Party shall not copy,
6 remove, or otherwise transfer any portion of the source code onto any recordable media or recordable
7 device. The Producing Party may visually monitor the activities of the Receiving Party's representatives
8 during any source code review, but only to ensure that there is no unauthorized recording, copying, or
9 transmission of the source code.

10 (d) The Receiving Party may request paper copies of limited portions of source code
11 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers,
12 or for deposition or trial, but shall not request paper copies for the purposes of reviewing the source code
13 other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide
14 all such source code in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL -
15 SOURCE CODE." The Producing Party may challenge the amount of source code requested in hard copy
16 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the
17 Producing Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for purposes
18 of dispute resolution.

19 (e) The Receiving Party shall maintain a record of any individual who has inspected
20 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
21 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not
22 create any electronic or other images of the paper copies and shall not convert any of the information
23 contained in the paper copies into any electronic format. The Receiving Party shall only make additional
24 paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers
25 (including a testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for
26 the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing
27 Party at the end of each day and must not be given to or left with a court reporter or any other unauthorized
28

individual.²

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

² The nature of the source code at issue in a particular case may warrant additional protections or restrictions, for example, it may be appropriate under certain circumstances to require the Receiving Party to provide notice to the Producing Party before including “HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert report.

1 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such information produced by Non-
2 Parties in connection with this litigation is protected by the remedies and relief provided by this Order.
3 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
4 protections.

5 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
6 Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-
7 Party not to produce the Non-Party’s confidential information, then the Party shall:

8 1. promptly notify in writing the Requesting Party and the Non-Party that some
9 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

10 2. promptly provide the Non-Party with a copy of the Stipulated Protective
11 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the
12 information requested; and

13 3. make the information requested available for inspection by the Non-Party.

14 (c) If the Non-Party fails to object or seek a protective order from this court within 14
15 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-
16 Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a
17 protective order, the Receiving Party shall not produce any information in its possession or control that is
18 subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a
19 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
20 court of its Protected Material.

21 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material
23 to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving
24 Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
25 its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons
26 to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or
27 persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
28 A.

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

13. MISCELLANEOUS

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

13.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with applicable sealing procedures. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. A sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant unless otherwise instructed by the court.

14. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving

1 Party must return all Protected Material to the Producing Party or destroy such material. As used in this
2 subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other
3 format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned
4 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the
5 same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category,
6 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
7 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
8 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
9 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
10 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and
11 consultant and expert work product, even if such materials contain Protected Material. Any such archival
12 copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in
13 Section 4 (DURATION).

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15
16 DATED: May 1, 2023

GREENBERG TRAURIG, LLP

17
18 By: /s/ Todd A. Pickles
19 KURT A. KAPPES
20 TODD PICKLES
21 MADELINE ORLANDO
22 Attorneys for Defendant
23 TRI-MERIT, LLC

24 DATED: May 1, 2023

LELAND, PARACHINI, STEINBERG, MATZGER &
MELNICK, LLP

25
26 By: /s/ Ravi D. Sahae (as authorized 5.1.23)
27 DAVID B. TILLOTSON
28 RAVI D. SAHAE
Attorneys for Plaintiff
CTI III, LLC

1 DATED: May 12, 2023

FORTIS LAW PARTNERS

2
3 By: /s/ Cara Thornton (as authorized 5.12.23)

Cara Thornton (admitted *pro hac vice*)

4 Attorneys for Defendant

BARRY DEVINE

5 DATED: May 12, 2023

NOONAN LAW GROUP

6
7 By: /s/ Todd Noonan (as authorized 5.12.23)

Todd Noonan

8 Attorneys for Defendant

9 BARRY DEVINE

10
11
12
13 **ORDER**

14 IT IS HEREBY ORDERED that the parties' stipulation is granted.

15 IT IS FURTHER ORDERED THAT:

16 1. Requests to seal documents shall be made by motion before the same judge who will decide
17 the matter related to that request to seal.

18 2. The designation of documents (including transcripts of testimony) as confidential pursuant to
19 this order does not automatically entitle the parties to file such a document with the court under seal.
20 Parties are advised that any request to seal documents in this district is governed by Local Rule 141. In
21 brief, Local Rule 141 provides that documents may only be sealed by a written order of the court after a
22 specific request to seal has been made. L.R. 141(a). However, a mere request to seal is not enough under
23 the local rules. In particular, Local Rule 141(b) requires that "[t]he 'Request to Seal Documents' shall set
24 forth the statutory or other authority for sealing, the requested duration, the identity, by name or category,
25 of persons to be permitted access to the document, and all relevant information." L.R. 141(b).

26 3. A request to seal material must normally meet the high threshold of showing that "compelling
27 reasons" support secrecy; however, where the material is, at most, "tangentially related" to the merits of a
28

1 case, the request to seal may be granted on a showing of “good cause.” Ctr. for Auto Safety v. Chrysler
2 Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016); Kamakana v. City and County of Honolulu, 447
3 F.3d 1172, 1178-80 (9th Cir. 2006).

4 4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of certain
5 documents, at any court hearing or trial – such determinations will only be made by the court at the
6 hearing or trial, or upon an appropriate motion.

7 5. With respect to motions regarding any disputes concerning this protective order which the
8 parties cannot informally resolve, the parties shall follow the procedures outlined in Local Rule 251.
9 Absent a showing of good cause, the court will not hear discovery disputes on an ex parte basis or on
10 shortened time.

11 6. The parties may not modify the terms of this Protective Order without the court’s approval. If
12 the parties agree to a potential modification, they shall submit a stipulation and proposed order for the
13 court’s consideration.

14 7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement of the
15 terms of this Protective Order after the action is terminated.

16 8. Any provision in the parties’ stipulation that is in conflict with anything in this order is hereby
17 DISAPPROVED.

18 DATED: May 17 2023

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on _____ in the case of ***CTI III, LLC v. BARRY DEVINE, TRI-MERIT, LLC, Case No. 2:21-cv-02184-JAM-DB***. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]